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Attorneys for Bank of the Rockies N.A.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA**

<b>JOHN MICHELE FANUZZI and NORAH BAWN FANUZZI,  Debtors.</b>	) ) ) ) ) )	<b>Case No. 11-61848</b>
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**MOTION TO ENTER AND INSPECT REAL PROPERTY**

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The Motion of Bank of the Rockies N.A. (hereinafter "Bank"), pursuant to Rules F.R.B.P. 7034(a)(2) and 9014(c), respectfully represents:

1. The Debtors filed a Petition in this Court under Chapter 11 of the Bankruptcy Code on September 22, 2011. Debtors are serving as Debtors-in-Possession.
2. Bank is the owner of real property (the "Property"), more fully described below, which is unlawfully occupied by Debtors.
3. Bank acquired the Property for \$1,265,693.61, at a Trustee's Sale under the Montana Small Tract Financing Act conducted on November 19, 2010, which foreclosed Deeds of

Trust granted by Golden Ratio Woodworks, Inc. to Bank to secure loans totaling \$1,108,592.70, plus attorneys fees, costs, trustee fees, and property taxes.

4. Debtors are not the owners of the Property and have no legal or equitable interest therein. Accordingly, the Property is not property of the Estate under 11 U.S.C. §541. However, the Debtors have listed the Property on their Bankruptcy Schedule A as being owned by them.

5. On November 7, 2011, Bank filed a Motion to Modify Stay to permit Bank to proceed with its applicable non-bankruptcy law remedies with respect to the Property (Doc. #13). Said motion is presently pending before this Court.

6. Said Motion to Modify Stay is a contested matter under Rule 9014 F.R.B.P.

7. Entry into and inspection of real property is authorized by Rule 7034 F.R.B.P., which is applicable to contested matters, as set forth in Rule 9014(c).

8. In litigation that was pending prepetition in the U.S. District Court for the District of Montana, Cause No. CV-11-63-BLG, Bank served a request to enter and inspect real property upon Debtor John Fanuzzi, who was the Plaintiff in said litigation. Debtor objected to said request stating that Bank has no right to come on the Property and would be treated as a trespasser if Bank entered the Property. Bank reasonably believes that further attempts by Bank to obtain Debtors' voluntary consent to enter and inspect the Property would be futile and unduly time consuming.

9. Bank needs to enter and inspect the Property in order to determine whether there has been any damage, loss or destruction of the Property and determine persons who are in occupancy of the Property.

10. The legal description of the Property and its location, is as follows:

That part of the W1/2 of Section 4 and the SE 1/4 of Section 5, Township 6 South, Range 8 East, of the Principal Montana Meridian, in Park County, Montana, described as Lot 3 of Minor Subdivision Plat No. 149 on file in the office of the Clerk and Recorder of said County, under Document #239761.

TOGETHER WITH all of the rights and privileges of Grantor in said Real Property, all existing erected or affixed buildings, improvements and fixtures, all easements, rights of way, all water rights and ditch rights (including stock and utilities with ditch or irrigation rights), all other rights, royalties and profits related to the Real Property, including without limitation all minerals, oil, gas, geothermal and similar matters, and all of the tenements, hereditaments, appurtenances and improvements, thereupon belonging or otherwise appertaining, or thereto incident, the rents, issues, and profits thereof.

The Property is commonly known as 2892 Highway 89 South, Emigrant, MT 59027.

WHEREFORE, Bank of the Rockies, N.A. moves the Court to enter an order authorizing Bank to enter and inspect the Property, as described above, within 10 days.

DATED this 23<sup>rd</sup> day of November, 2011.

By: /s/ Joel E. Guthals  
Attorneys for Bank of the Rockies N.A.

## NOTICE OF OPPORTUNITY TO RESPOND AND REQUEST HEARING

If you contest the motion, you must file a written responsive pleading and request a hearing within fourteen (14) days of the date of the motion. The responding party shall schedule the hearing on the objection at least twenty-one (21) days after the date of the response and request for hearing shall include in the caption of the responsive pleading in bold and conspicuous print the date, time and location of the hearing by inserting in the caption the following:

### NOTICE OF HEARING

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Location: \_\_\_\_\_

If no response and request for hearing are timely filed, the Court may grant the relief requested as a failure to respond by any entity shall be deemed an admission that the relief requested should be granted.

DATED this 23<sup>rd</sup> day of November, 2011.

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By: /s/ Joel E. Guthals  
Attorneys for Bank of the Rockies N.A.

### **CERTIFICATE OF SERVICE**

I, the undersigned, certify under penalty of perjury that on November 23, 2011, or as soon as possible thereafter, copies of the foregoing was served electronically by the Court's ECF notice to all persons/entities requesting special notice or otherwise entitled to the same and that in addition service by mailing a true and correct copy, first class mail, postage prepaid, was made to the following persons/entities who are not ECF registered users:

John Michele Fanuzzi  
Norah Bawn Fanuzzi  
2892 US Hwy 89 South  
Emigrant, MT 59027

**Guthals, Hunnes & Reuss, P.C.**

By: /s/ *Joel E. Guthals*  
Attorneys for Creditor Bank of the Rockies N.A.